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ER 4-3960

OGC HAS REVIEWED.

24 July 1953

Memorandum for: Acting Deputy Director (Administration)

From : Office of General Counsel

Subject : Shortage in [REDACTED] Funds

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Reference : Memorandum from Comptroller, CIA, to DD/A, same subject, dated 17 June 1953, and Annexes thereto.

1. By transmittal slip dated 22 June 1953, the opinion of this office with regard to the propriety of writing off a shortage of seventy dollars (\$70.00) in the [REDACTED] funds is requested.

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2. The relevant facts are these. On Saturday, 7 February 1953, two employees of the [REDACTED] drew twenty-eight

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period 4 - 31 January 1953. The cash drawn was counted at the time and both employees were satisfied as to the correctness of the amount. Subsequent to the withdrawal, the cash records of the office from which the money was drawn balanced, and since have remained in balance. The money was placed in a wooden box and stored in a walk-in vault in the [REDACTED] over the weekend. On Monday, 9 February 1953, the money box was removed to the so-called "payroll office" and each employee was paid as he reported to that office. Incident to such payment, one office employee counted the money due a payee, using a carbon copy of the payroll change notice as a basis for verification. A second recounted it, using a second carbon copy, and paid the person concerned. Such person was asked to count it a third time. After all but a few stragglers had been paid, the remaining money was divided up in terms of the amounts due those remaining. These amounts were attached to the payroll change notices of the individuals concerned to be picked up in a "package" as one or another straggler came in. As this was being done, it was discovered that there was a shortage of seventy dollars (\$70.00) in the cash available.

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3. It is stated that only "Finance Office employees" had access to the walk-in vault and that the wooden money box "was never left unattended during the (pay) day." The record does not show whether or not the box had a lock, or was locked, during the day, whether in or out of the walk-in vault. Nor does it state whether the walk-in vault was kept locked whenever no one was in it. The referenced memorandum refers to the use of carbon copy change notices as a

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basis for verification of the amounts due as a "procedural deficiency" and seems to infer that this use could have been responsible for the loss.

4. Against this background, they are the recommendations of the Comptroller, MAC; the Chief of the Far East Division and the Comptroller, CIA, that the loss be written off. No basis for these recommendations is furnished.

5. It is hardly necessary of citation that a Government employee charged with the safe-keeping, transfer, or disbursement of funds is responsible for the loss of such funds to the United States. The statutory authority for this principle is found in 62 Stat. 726, 727; 18 USC 643, 649 (1948). It has received frequent attention by the Comptroller General of the United States, 7 Comp. Gen. 343 and 19 Comp. Gen. 307. Particularly as regards this Agency, its sense is set out in Sections 1.4(a) and 1.5(b)(2) of the Confidential Funds Regulations.

6. Certain legislation looking toward the relief of disbursing officers from the strict application of this rule, namely, 55 Stat. 875 (1941) and 61 Stat. 496, 26 USC 421 (1947) are not applicable to this situation because it concerned only such officers who were members of the armed services. The question then becomes that of whether or not Section 1.4(c) of the Confidential Funds Regulations mitigates the operation of this general rule in this particular situation. This regulation provides:

"c. Questions involving personal pecuniary liability, or loss or shortage of Government funds not properly accounted for, shall be referred by the Chief, Finance Division, to the Comptroller, who will provide for an adequate investigation and make recommendations to the Deputy Director (Administration) for final action."

7. The dispensation under which CIA is relieved from the requirement of conventional accountability proceeds from the premise that there are certain of its activities involving the expenditure of money which, by their nature, are not susceptible to such accountability. See 31 Comp. Gen. 191 (1951) and [REDACTED] dated 6 August 1952. From this it follows that, in order to be exempted from such accountability as regards a given expenditure, or loss, of money, such expenditure or loss must have been incurred in circumstances peculiar to the discharge of this Agency's mission. If so, and certain requirements as to amount are met, then, pursuant to Section 1.4(c) of the Confidential Funds Regulations, the DD/A may relieve the person(s) concerned. The issue thus is narrowed to whether or not the circumstances of the loss in this case are of a character to warrant the exercise of this authority.

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25X1A6a 8. However the money was lost, whether due to a misreading of a carbon-copy change notice, or to some circumstance not apparent from the facts of record, it is fair to conclude that it was lost generally incident to its safe-keeping and disbursement for pay purposes. The safe-keeping and disbursement of money for pay purposes, as was accomplished here, comprises a situation distinctive of no Government agency. Paydays and pay lines are as common, as widespread, as Government itself. Whether in the [REDACTED] of CIA, or in the disbursing office [REDACTED] Virginia, or in one of those of [REDACTED] the routine, the incidents, of the process are the same. The opportunities for administrative error or inadvertent loss are likewise present. This being so, we conclude that the circumstances of the loss in the instant case are not peculiar to the discharge of this Agency's mission.

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25X1A 9. From the above, it is our opinion that [REDACTED] of the Confidential Funds Regulations does not reach to the situation at hand, that a strict accounting for the money is in order and that, lacking such accounting, the person charged with the responsibility for that accounting be held personally liable for the amount of the loss.

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/s/ [REDACTED]